

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 13, 2005

MANNY T. ANDERSON v. STATE OF TENNESSEE

Appeal from the Circuit Court for Wayne County
No. 13513 Robert L. Jones, Judge

No. M2004-02116-CCA-R3-HC - Filed March 23, 2006

The Appellant, Manny T. Anderson, proceeding *pro se*, appeals the Wayne County Circuit Court's summary dismissal of his petition for writ of habeas corpus. In 1998, Anderson pled guilty to two counts of aggravated assault and to one count of aggravated kidnapping and was sentenced as provided by the terms of a plea agreement. Anderson alleges that in December 2003, the Davidson County Criminal Court, without his consent, amended his aggravated kidnapping conviction to reflect a conviction for attempted especially aggravated kidnapping. The State acknowledges the amended conviction, asserting, however, that even if Anderson's allegations are true, they support only a voidable claim for which habeas corpus relief is not available. The trial court agreed and dismissed the petition. After review, we agree that Anderson is not entitled to habeas corpus relief; however, we conclude that Anderson's petition presents a colorable claim for post-conviction relief. *See* T.C.A. § 40-30-105(c) (2003). Accordingly, the Circuit Court Clerk of Wayne County is directed to transfer the petition to the Davidson County Criminal Court for further proceedings as authorized by the Post-Conviction Procedure Act.

**Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed; Petition to be Transferred to
Davidson County Criminal Court for Post-Conviction Relief Proceedings**

DAVID G. HAYES, J., delivered the opinion of the court, in which JOSEPH M. TIPTON and JAMES CURWOOD WITT, JR., JJ., joined.

Manny T. Anderson, *Pro Se*, Clifton, Tennessee.

Paul G. Summers, Attorney General and Reporter; Elizabeth B. Marney, Senior Counsel; and Helen Walton Yarbrough (at trial), Assistant Attorney General, for the Appellee, State of Tennessee.

OPINION

Procedural History

On September 10, 1998, the Appellant pled guilty to two counts of aggravated assault and one count of aggravated kidnapping. *Manny T. Anderson v. State*, No. M2002-00641-CCA-R3-PC

(Tenn. Crim. App. at Nashville, April 30, 2003). He was subsequently sentenced as a Range II, multiple offender to concurrent sentences of eight years for each count of aggravated assault and as a Range I, standard offender to eight years for the aggravated kidnapping. *Id.* Pursuant to the plea agreement, the sentences were suspended, and the Appellant was placed on probation. *Id.*¹

In June 1999, the Tennessee Department of Correction notified the trial court by letter of an “upcoming change in the calculation of [the Appellant’s] sentence that was imposed on September 10, 1998” because, in January 1998, when the aggravated kidnapping was committed, Tennessee Code Annotated section 40-35-501 mandated that anyone convicted of that offense serve 100% of the sentence imposed. *Id.* The letter further provided that “[i]f revoked from probation, . . . the Department will be recalculating [the Appellant’s] sentence to comply with the order of the Davidson County court.” *Id.*

On September 14, 2001, the Appellant was found in violation of probation, resulting in the revocation of his three suspended sentences. The Appellant’s judgment of conviction for aggravated kidnapping was amended at this time to require 100% service of the eight-year sentence as a violent offender. *Id.* The sentences for the two aggravated assault convictions were left unchanged. *Id.*

On January 2, 2002, the Appellant filed a *pro se* petition for post-conviction relief challenging his resentencing as to aggravated kidnapping, asserting that the sentence failed to comply with the plea agreement and seeking to withdraw his pleas of guilty as to that conviction, as well as the two aggravated assault convictions. *Id.* The post-conviction court summarily dismissed the petition as time-barred, but, on appeal, a panel of this court reversed that ruling concluding that the one-year statute of limitations did not begin to run until the trial court amended the judgment for the kidnapping conviction to reflect sentencing as a violent offender. *Id.* Accordingly, the case was remanded to the post-conviction court for a hearing on the merits of the Appellant’s petition. *Id.* Following a post-conviction hearing, on December 3, 2003, the post-conviction court amended the aggravated kidnapping judgment to reflect that the Appellant pled guilty to attempted especially aggravated kidnapping and received an eight-year sentence as a Range I standard offender. No direct appeal was filed. However, in June 2004, the Appellant filed the instant *pro se* petition for writ of habeas corpus in the Wayne County Circuit Court alleging that the post-conviction court was without jurisdiction to amend his conviction for aggravated kidnapping. The court entered an order summarily dismissing the Appellant’s habeas corpus petition on July 29, 2004. This appeal followed.

Analysis

On appeal, the Appellant argues that the trial court was without jurisdiction to amend his conviction for aggravated kidnapping and, thus, the conviction is void. This argument is premised

¹Notwithstanding the agreement, we note that Tennessee Code Annotated section 40-35-116 requires immediate revocation of bail upon a conviction for aggravated kidnapping, and Tennessee Code Annotated section 40-35-303 provides that a defendant who is convicted of aggravated kidnapping is ineligible for probation.

upon the Appellant's assertions: (1) the amended judgment breached the terms of his plea agreement; and (2) the judgment was final and could not be amended without his consent.

In this court's order of remand to the post-conviction court, we remanded for consideration of the Appellant's post-conviction petition "contesting the resentencing as to the aggravated kidnapping conviction and seeking to withdraw his pleas of guilty as to this offense as well as both counts of aggravated assault." *Id.* The Appellant argues that the post-conviction court's action in modifying only the aggravated kidnapping conviction was illegal because it ignored the two aggravated assault convictions, which were part of the single plea agreement and, thus, "deprived the petitioner the majority of his bargain." Moreover, the Appellant argues that the post-conviction court's amendment was made without his consent.²

The grounds upon which habeas corpus relief is warranted are narrow. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000). The writ of habeas corpus reaches jurisdictional error only. The writ does not lie to correct mere errors and irregularities committed by a court that is acting within its jurisdiction. *State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979). The writ will issue only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that a court lacked jurisdiction or authority to sentence a defendant or that the sentence has expired. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993).

A habeas corpus petition may only be used to challenge judgments that are void and not merely voidable. *Id.*; *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A void judgment "is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired." *Taylor*, 995 S.W.2d at 83.

The Appellant's argument that the December 3, 2003 amended judgment of conviction for attempted especially aggravated kidnapping is void is without merit. Clearly, the Davidson County Criminal Court had subject matter jurisdiction over the offense and the sentence as imposed. Moreover, the Appellant's argument that the amended judgment of conviction is void because the judgment form does not reflect compliance with the plea agreement is also misplaced. A plea agreement which is breached or later dishonored presents a voidable, as opposed to a void judgment. *Skyla Sepeda Smith v. Cherry Lindamood, Warden*, No. M2003-01872-CCA-R3-HC (Tenn. Crim. App. at Nashville, July 7, 2004); *Roger T. Johnson v. State*, No. M2002-02902-CCA-R3-CO (Tenn. Crim. App. at Nashville, Mar. 5, 2004); *Jeffrey Miller v. State*, E2000-01192-CCA-R3-CD (Tenn. Crim. App. at Knoxville, Aug. 29, 2001). Because the alleged error presents a voidable error, the Appellant's claims are not cognizable for the writ of habeas corpus.

²The post-conviction proceeding is not included in the record. Because the Appellant's *pro se* habeas corpus petition was summarily dismissed, the record is devoid of any facts. Thus, we are without knowledge as to whether the post-conviction court's amended judgment of conviction of attempted especially aggravated kidnapping stems from a plea agreement at the post-conviction level or, as asserted by the Appellant, a judgment that was entered without his consent and without the opportunity to address the court.

Notwithstanding this holding, we are constrained to note that “[a] petition for habeas corpus may be treated as a petition under [the Post-Conviction Procedure Act] when the relief and procedure authorized by [the Act] appear adequate and appropriate” T.C.A. § 40-30-105(c). In considering whether a post-conviction petition states a colorable claim for relief, the post-conviction court is to take the facts alleged as true. *See* T.C.A. § 40-30-106(f) (2003). “A colorable claim is a claim . . . that, if taken as true, in the light most favorable to petitioner, would entitle petitioner to relief under the Post-Conviction Procedure Act.” Tenn. Sup. Ct. R. 28, § 2(H). In this case the Appellant’s claims are supported by specific factual allegations which, as concluded *supra*, present on their face a colorable claim. Moreover, the petition is considered timely filed as the amended judgment of conviction was entered on December 3, 2003, and the petition for writ of habeas corpus was filed in June 2004. *See* T.C.A. § 40-30-102(a) (2005). Additionally, the Appellant seeks relief, for the first time, from his judgment of conviction for attempted especially aggravated kidnapping, which was entered on December 3, 2003. *See* T.C.A. § 40-30-102(c).

CONCLUSION

Based upon the foregoing, the trial court’s denial of habeas corpus relief is affirmed; however, the Appellant’s petition for habeas corpus is to be treated as a petition for post-conviction relief. The Clerk of the Wayne County Circuit Court is directed to transfer the case file to the Davidson County Criminal Court for docketing. The assigned judge of the Davidson County Criminal Court is instructed to appoint counsel and proceed as provided by the Post-Conviction Procedure Act. Failure to do so may result in dismissal of the petition. Additionally, should the Appellant choose not to pursue the petition as one for post-conviction relief, he may, through counsel, move for dismissal of the petition without prejudice.

DAVID G. HAYES, JUDGE